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9 WELLS FARGO BANK, N.A.,
10 dba WELLS FARGO DEALER SERVICES

11 UNITED STATES BANKRUPTCY COURT
12
13 NORTHERN DISTRICT OF CALIFORNIA

14 In Re:

Case No. 14-30462 BDM
(Chapter 13 Proceeding)

15 JOHN S. METHENY,

16 Debtor.
17 _____/

SECURED CREDITOR, WELLS FARGO
BANK, N.A., DBA WELLS FARGO
DEALER SERVICES's OBJECTION TO
CONFIRMATION OF CHAPTER 13
PLAN

18 **MEETING OF CREDITORS:**

Date: September 25, 2014

Time: 9:00 a.m.

19 Ctrm: Office of the United States Trustee
20 235 Pine Street
Suite 850
San Francisco, CA

21 **CONFIRMATION HEARING:**

Date: October 15, 2014

Time: 1:00 p.m.

22 Ctrm: 22nd Floor,
23 235 Pine Street,
San Francisco, CA

24 WELLS FARGO BANK, N.A., DBA WELLS FARGO DEALER SERVICES
25 (hereinafter referred to as "Secured Creditor") objects to confirmation of the Chapter 13 Plan
26 proposed hereunder by Debtor, JOHN S.METHENY (hereinafter referred to as "Debtor") on
27 the following grounds:
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1 1. On February 3, 2012, Debtor (as Buyer) entered into a written Retail
2 Installment Sale Contract – Simple Interest Finance Charge (hereinafter referred to as “Security
3 Agreement”) with (as Seller) which evidenced Debtor’s financed purchase of the 2008 Toyota
4 Prius (Vehicle Identification Number JTDKB20U583350896) (hereinafter referred to as the
5 “property”), which has become the subject of this action. The aforementioned Security
6 Agreement was duly assigned by Hanlees Toyota to Secured Creditor during the normal course
7 of business on or about February 3, 2012.
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9 2. Upon executing the Security Agreement, a true and correct photocopy of
10 which is filed separately herewith and which is incorporated herein by reference, and by
11 subsequently taking possession of the property which was being financed by Secured
12 Creditor, Debtor agreed and became obligated to pay the sum of \$12,351.41, with interest
13 accruing at the contract rate of 18.99% per annum, for the financed purchase of the subject
14 property. Further evidence of Secured Creditor's secured position is reflected on the
15 Certificate of Title for the subject property, a true and correct photocopy of which is filed
16 separately herewith and which is incorporated herein by reference.
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18 3. As mandated by 11 U.S.C. § 1325, et seq., the value of Secured Creditor’s
19 secured collateral must be the \$9,255.87 which was due and owing on Debtor’s account with
20 Secured Creditor at the time of the Debtor’s filing of the above-captioned case. More
21 specifically, as noted on the prevailing Security Agreement, Secured Creditor has a purchase
22 money security interest securing the debt which is the subject of its claim against Debtor and
23 the debt was incurred within the 910-day period preceding the date of the filing of the
24 petition, and the collateral for that debt consists of a motor vehicle acquired for the personal
25 use of Debtor.
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1 4. Secured Creditor objects to the \$7,400.00 valuation allocated to its secured
2 collateral under Debtor's proposed Plan in that should Secured Creditor be forced to accept
3 the low valuation of its secured claim hereunder, Secured Creditor's security interest will be
4 severely diminished on collateral which already depreciates at a rapid rate during the normal
5 course of its use.

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7 5. Moreover, Secured Creditor objects to the Debtor's classification of its
8 secured claim as one subject to 11 U.S.C. § 506(a) when, in fact, the subject vehicle was
9 purchased by Debtor 782 days prior to their filing of the above-captioned case and,
10 therefore, Secured Creditor's claim is not subject to §506(a).

11 6. The Secured Creditor objects to the Plan because the proposed interest rate of
12 4.50% is less than the guidelines provided in Till vs. SCS Credit Corp. 541 U.S. 465, 124
13 SCt 1951, 158 L.Ed. 2d 787 (2004) (In re Till). In the Till case, the Supreme Court found
14 that the appropriate rate of interest when a debtor is "cramming down" the value of
15 collateral pursuant to 11 U.S.C. Section 1325(a)(5)(B)(ii) is the "prime-plus" or "formula
16 rate" which augments the national prime rate to account for the risk of nonpayment by the
17 debtor. The Supreme Court refused to determine the proper scale for risk adjustment, but
18 noted that other courts have approved adjustments of 1.5% to 3%. The Prime Rate was
19 3.25% at the time the Debtor filed this case.

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22 7. Secured Creditor believes that if it is forced to accept its inclusion under
23 Debtor's Plan as is presently proposed, Secured Creditor will be prejudiced by its position
24 thereunder and Secured Creditor will continue to suffer substantial, mounting losses.

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WHEREFORE, SECURED CREDITOR RESPECTFULLY MOVES:

1. That, based upon the risk factors set forth more fully above, as well as others that may exists, confirmation of this Chapter 13 Plan be denied; or, in the alternative,
2. That Debtor's Plan hereunder be amended in order to allow Secured Creditor to receive the fully secured sums that are due and owing to it. More specifically, the replacement value to Debtor of the property should be set at \$9,255.87;
3. That Secured Creditor's secured claim accrue interest at the fair market rate of 6.25% per annum.

Dated: September 5, 2014

LAW OFFICES OF
AUSTIN P. NAGEL

/s/ Austin P. Nagel
Attorneys for Secured Creditor,
WELLS FARGO BANK, N.A.,
dba WELLS FARGO DEALER SERVICES

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